88-1235

Supreme Court, U.S.
FILED
JAN 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

ROBERT T. BOINEAU, PETITIONER

VS.

UNITED STATES OF AMERICA AND MERRITT J. SWINNEY, REVENUE OFFICER, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ROBERT T. BOINEAU, PRO SE
P.O. BOX 5162
COLUMBIA, SOUTH CAROLINA 29250
(803) 771-6400

QUESTIONS PRESENTED FOR REVIEW

1. Should the standards that the Internal Revenue Service must meet to obtain judicial enforcement of its orders be the same in each circuit?
2. Can the petitioner invoke the Fifth Amendment privilege against self-incrimination in an IRS enforcement procedure in both criminal and civil cases in all circuits?
3. Should the debtor's prison, which then Senator, later President, Martin Van Buren, abolished in 1832, be re-established in America?
4. What effect does the new Taxpayer Bill of Rights have on all of the above?

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TABLE OF AUTHORITIES

Argersinger vs. Hamlin, 407 U.S. 25, 37, 92 S. Ct. 2006, 32 L.Ed. 2d 530 (1972).

Gorban, 352 U.S. 330, 346.

Henkel vs. Bradshaw, 483 F 2d 1386 (9th Cir., 1973).

Kilgo, 468 F 2d 1215 (4th Cir., 1973).

United States vs. Powell, 379 U.S. 48 (1964).

United States vs. Sun Kung Wang, 468 F 2d 1368 (9th Cir., 1972).

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

This matter came on for hearing on June 29, 1987 for rule to show cause why respondent should not be compelled to comply with IRS summons. Pursuant to the oral direction of the court, Robert T. Boineau shall appear before Revenue Officer, Internal Revenue Service at Columbia, South Carolina, on Friday, July 10, 1987 at 10 A.M. to comply with the IRS summons, or be held in contempt of this court.

Notice of Intent to Appeal and a Motion to Stay were filed July 10, 1987, by Robert T. Boineau. Memorandum in opposition to Motion to Stay was filed July 16, 1987.

In the opinion filed August 19, 1988, the decision of District Court was affirmed. The Petition for Rehearing was filed September 2, 1988, and submitted September 6, 1988. A court order was filed September 28, 1988 denying Petition for Rehearing.

Mandate was issued October 5, 1988. Record was returned to District Court October 5, 1988.

JURISDICTIONAL STATEMENT

Judgment sought to be reviewed was filed June 29, 1987. A Petition of Rehearing was denied September 28, 1988. This Honorable Court is invoked pursuant to the specific provision of 28 USC 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fourth Amendment to the U.S. Constitution

Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the

place to be searched, and the persons or things to be seized.

Fifth Amendment to the U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, property or without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the U.S. Constitution

In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by

an impartial jury as a state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed as of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his witness.

Fourteenth Amendment to the U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws.

28 USC 1254(1)

Courts of Appeal Certiorari Certified Questions

Cases in the Courts of Appeal may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree;

(2) By certification at any time by a Court of Appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

RULE 17. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons that will be considered.

   [a] When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

STATEMENT OF THE CASE

The respondent is using its summons enforcement power to re-establish the Debtor's Prison in this circuit which then Senator, later President Martin Van Buren abolished in 1832. Any one of its summons enforcement procedures used separately is neutral enough as Congress intended. In this circuit the respondent has orchestrated a new system in concert with the district and the circuit courts that will put this petitioner (whose only crime is owing the IRS money and whose family has already paid a $450,000 lump sum by selling everything they owned) behind bars permanently, so that even a mass murderer would have a more certain permanent release date than would the petitioner. The respondents have already used this system on the auto petitioner was leasing.

The system works like this: the respondents gain entrance with a wrecker to a locked garage in the building in which petitioner rents an apartment. The wrecker hauls off the automobile petitioner is

leasing. The owner of the automobile, rather than fight them in court, sends the amount the respondent is demanding and the respondent collects the money and then reseizes the automobile. The respondent obviously has the power to repeat this process ad infinitum.

The old, ailing petitioner, who is on a very restrictive diet regime, most of which cannot be obtained while incarcerated, has been assured that should he survive the contempt citation, the respondent will merely repeat the process, as they have already done with the automobile petitioner was leasing, ad infiitum, so that even a mass murderer would have a more certain permanent release date than would petitioner. The harassment of petitioner and his family has been going on for seventeen years, during which they have sold everything petitioner and his wife and family had including the ancestral plantation that was built fifty years before the ratification of the Constitution. The respondent collected four hundred fifty thousand in a

ninety-day period from the petitioner. Respondent's agent, Mr. Swinney, has decided that seventeen years of harassment are not enough. So he, after spending hundreds of hours with all of petitioner's friends and associates, have devised a set of questions to which he has the answers, but petitioner doesn't. This spans a seventeen-year period and the petitioner has no records, but respondent's agent Swinney does. Respondent's agent Swinney then brings petitioner before four of respondent's agents and demands answers to questions that Swinney has answers to but petitioner doesn't.

If petitioner answers, and makes a mistake, and this is highly probable, since we are covering a seventeen-year period, the respondent sends petitioner to jail for perjury. If petitioner doesn't answer or pleads the Fifth Amendment, then the respondent sends petitioner to jail for contempt. If fragile, ailing petitioner should survive the incarceration, the respondent will merely repeat the process as they have already done with the auto

petitioner was leasing. This will return petitioner to jail ad infinitum, so that even a mass murderer would have a more certain permanent release date than would petitioner.

In Argersinger vs. Hamlin, 407 U.S. 25, 37, 92 S.Ct. 2006, 32 L.Ed. 2d 530 (1972), the Court held that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he is represented by counsel at his trial. The circuits with an opportunity to do so have concluded that this right must be extended to a contempt proceeding, be it civil or criminal, where the defendant is faced with the prospect of imprisonment. See United States vs. Sun Kung Wang, 468 F 2d 1368 (9th Cir., 1972). In Re Kilgo, 468 F 2d 1215 (4th Cir., 1973); Henkel vs. Bradshaw, 483 F 2d 1386 (9th Cir., 1973).

The provision of counsel for the petitioner would not alter the character of the proceeding, which is already adversarial, formal and quintessentially legal. It, however, would diminish the

prospect of any erroneous result, a prospect that is inherently substantial, given the gross disparity in power and resources between the United States of America, respondent and the uncounseled petitioner.

The petitioner cannot possibly succeed without being able to identify material issues, develop defenses, gather and present sufficient supporting non-hearsay evidence, and conduct cross-examination of adverse witnesses. Faced with a formal accusatory adjudication, with an adversary, the United States and the Internal Revenue that commands great investigative and prosecutorial resources with standards that involve ill-defined notions or yardsticks leaves the petitioner plainly outstripped without the guiding hand of counsel. The poor petitioner, lacking sufficient legal education or experience and easily intimidated by figures of authority finds the imbalance insuperable without counsel.

In Argersinger vs. Hamlin, 4074 U.S. 25 (1972) assistance of counsel was found to be

requisite under the Sixth Amendment, as incorporated into the Fourteenth, even for a misdemeanor offense punishable by imprisonment for less than six months.

The rights of a person who is examined should not be destroyed merely because the inquiry is given the euphonious label "administrative." This procedure allows an Internal Revenue agent to lay the groundwork for a future prosecution without the protection of the presence of counsel.

What is acceptable in one circuit will land petitioner permanently behind bars in another. These discrepancies could be avoided in the future and a grand service rendered to this petitioner and to all Americans. In this, the two-hundredth anniversary of the ratification of the Constitution, the United States Supreme Court could firmly establish once and for all how the Fourth, Fifth, Sixth and Fourteenth Amendments should affect the Internal Revenue Service enforcement procedure in the light of the new Taxpayer's Bill of Rights Bill.

REASON FOR GRANTING CERTIORARI

A quarter of a century ago Lyndon Baines Johnson had just defeated Barry ("In Your Heart You Know He's Right") Goldwater for president of the United States of America. This was the beginning of The Great Society, the Bay of Tonkin, Vietnam, etc., and the United States Supreme Court granted certiorari in the United States vs. Powell, 379 U.S. 48 (1964). The reason for granting certiorari in that case was because of the differing views in the circuits on the standards the Internal Revenue Service must meet to obtain judicial enforcement of its orders.

The court today says that it recognizes that the authority vested in tax collectors may be abused, but it is nonetheless unable to find any statutory limitation upon that authority. The only protection from abuse that Congress provided, it says, is "placing the Federal Courts between the Government and the person summoned." But that, of course, is no protection at all, unless the Federal Courts are

provided with a measurable standard when asked to enforce a summons. The Internal Revenue Service is not a grand jury. It is a creature not of the Constitution, but of legislation and is thus peculiarly subject to legislative constraints. See In Re Gorban, 352 U.S. 330, 346.

Now, a quarter of a century later, after eight years under Reagan, we have George Bush inaugurating a gentler America, a thousand points of light and a new Taxpayer's Bill of Rights. This is also the 200th anniversary of the ratification of the Constitution and certainly two and possibly four of the amendments to that Constitution are involved. It involves substantial amounts of property. One of the parcels being the petitioner's ancestral plantation home that had been in the family for centuries. The main dwelling was constructed fifty years before the ratification of the U.S. Constitution. It also involves substantial sums of money. Four hundred fifty thousand paid in a lump sum, more still owing. It is a marvelous opportunity, twenty-five years after United

States vs. Powell, 379 U.S. 48 (1964), during the dawn of a gentler America and on the two hundredth anniversary of the ratification of these amendments for the Reagan Court to clear up the differing views in the circuits on the standards the Internal Revenue Service must meet to obtain judicial enforcement of its orders.

The Congress has recently passed the Taxpayer's Bill of Rights. The bill was fought over for years and it affords many new and different views on the various issues that are discussed in this case. For example:

> Sec. 7520. PROCEDURES INVOLVING TAXPAYER INTERVIEWS. (2) Right of Consultation. – If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

The bill is very long and complicated with hundreds of sections which taken together with George Bush's thousand points of light in his gentler America might devise some method to prevent the re-establishment of the Debtor's Prison in America and the permanent incarceration of the petitioner whose only crime is that a lump sum of $450,000 did not satisfy the respondent.

CONCLUSION

Petitioner has been denied his constitutional rights. He was placed under court order without benefit of counsel.

Respondent should furnish petitioner with his Brady Information and should make their position truly known. Respondent should explain in writing why the years 1973, 1974, and 1975 are omitted from the summons. It is settled that petitioner can invoke the Fifth Amendment privilege against self-incrimination in an Internal Revenue enforcement procedure in both criminal and civil cases in some circuits. Therefore, petitioner has complied with Internal Revenue enforcement procedure and answered the questions to the best of the ability that his failing memory and lack of records will permit. What possible gain is there to grant the respondent the right to bring about an ipso facto life sentence that will confine the 62-year-old petitioner who is replete with serious physical, financial and memory problems to jail for the rest of his natural life?

Petitioner wants to have due process of law. Petitioner wants all his constitutional rights protected. Petitioner wants case sent back so that he can have benefit of counsel from the beginning.

APPENDIX

October 14, 1986

Mr. Merritt J. Sweeney
INTERNAL REVENUE SERVICE
1835 Assembly Street
Columbia, South Carolina 29201

RE: Trippett Boineau

Dear Mr. Sweeney:

The purpose of this letter is to confirm our conversation on October 10, 1986 regarding the above-referenced individual.

It is my understanding that you requested the presence of Mr. Boineau on October 10, 1986, at 11:00 a.m. He was to report to your office located at 1835 Assembly Street in Columbia. Mr. Boineau volunteered to appear on October 9, 1986; however, that arrangement was not satisfactory with you.

During our conversation on October 10, 1986, a request for an extension of time for Mr. Boineau to appear was made for two

(2) reasons: October 9, 1986 was not convenient for you; and, I had a previously scheduled Court appearance on October 10. You subsequently denied my request for an extension of time and insisted that Mr. Boineau appear without the benefit of having an attorney present.

Mr. Boineau did not want to appear without counsel and is again requesting an extension.

Sincerely,

Larry C. Smith

LCS/pab/jry

cc: Mr. Trippett Boineau

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF
SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA and Merritt J. Swinney, Revenue Officer,	)	
Petitioners,	)	CIVIL ACTION
v.	)	NO.M87-2-27
Robert T. Boineau,	)	
Respondent,	)	

PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS

The United States of America and Merritt J. Swinney, Revenue Officer of the Internal Revenue Service, by their attorney, Vinton D. Lide, United States Attorney for the District of South Carolina, aver to this Court as follows:

I.

This is a Proceeding brought pursuant to the provisions of 26 U.S.C. SS7402(b) and 7604(a) to judicially enforce an Internal Revenue Service summons.

II.

Petitioner, Merritt J. Swinney is a Revenue Officer of the Internal Revenue Service, employed in the Collection Division of the Office of the District Director of the Internal Revenue Service in Columbia, South Carolina, and is authorized to issue an Internal Revenue Service summons pursuant to the authority contained in 26 U.S.C. S7602, and Treasury Regulations S301.7602-1, 26 C.F.R. S301.7602-1.

III.

The respondent has his principal place of business or resides within the jurisdiction of this Court and may be found for service at 1829 Senate Street, Apt. 12-C, Columbia, South Carolina.

IV.

Merritt J. Swinney, Revenue Officer, is conducting an investigation into the tax liability of respondent for the years 1980, 1981, 1982, 1983, 1984 and 1985, as

is set forth in the Affidavit of Merritt J. Swinney, Revenue Officer, attached hereto as Exhibit A.

V.

The respondent is in possession and control of testimony and documents concerning the above-described investigation.

VI.

On September 26, 1986, an Internal Revenue Service summons was issued by Merritt J. Swinney, Revenue Officer, directing the respondent to appear before Revenue Officer Merritt J. Swinney on October 10, 1986, at 11:00 a.m. at 1835 Assembly Street, Room 570, Columbia, South Carolina 29201, to testify and to produce for examination books, papers, records and other data described in said summons. An attested copy of the summons was served by sliding the summons under the entrance door of the last and usual place of abode by Merritt J. Swinney, Revenue Officer, on

September 29, 1986. The summons is attached hereto and incorporated herein as Exhibit B.

VII.

On October 10, 1986, the respondent did not appear in response to the summons. The respondent's refusal to comply with the summons continues to date as set forth in the Affidavit of Merritt J. Swinney, attached hereto as Exhibit A..

VIII.

The books, papers, records or other data sought by the summons are not already in the possession of the Internal Revenue Service except as follows: Forms W-2 and Forms 1099.

IX.

All administrative steps required by the Internal Revenue Code for the issuance of the summons have been taken.

X.

It is necessary to obtain the testimony and to examine the books, papers, records.

or other data sought by the summons in order to properly investigate the Federal tax liability of respondent for the periods specified in paragraph IV above, as evidenced by the Affidavit of the petitioner Merritt J. Swinney, Revenue Officer, attached hereto and incorporated herein as part of this petition.

WHEREFORE, the petitioners respectfully pray:

1. That this Court enter an order directing the respondent to show cause, if any, why he should not comply with and obey the aforementioned summons and each and every requirement thereof.

2. That the Court enter an order directing the respondent to obey the aforementioned summons and each and every requirement thereof by ordering the attendance, testimony, and production of the books, papers, records, or other data as is required and called for by the terms of the summons before Merritt J. Swinney,

Revenue Officer, or any other proper officer or employee of the Internal Revenue Service, at such time and place as may be directed in the Court's order.

3. That the United States recover its costs in maintaining this action.

4. That the Court grant such other and further relief as is just and proper.

VINTON D. LIDE
UNITED STATES ATTORNEY

BY: _____
WISTAR D. STUCKEY
Assistant United States Attorney

Columbia, South Carolina

May 6, 1987

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF

SOUTH CAROLINA

COLUMBIA DIVISION

UNITED STATES OF AMERICA and Merritt J. Swinney, Revenue Officer of the Internal Revenue Service	)	
Petitioners	)	
v.	)	CIVIL ACTION NO._____
Robert T. Boineau	)	
Respondent	)	

A F F I D A V I T

Merritt J. Swinney, Being first duly sworn, deposes and says:

1. I am a duly commissioned Revenue Officer employed in the Collection Division of the Office of the District Director of Internal Revenue at Columbia, South Carolina.

2. In my capacity as a Revenue Officer, I am conducting an investigation into the tax liability of respondent for

the calendar years 1980, 1981, 1982, 1983, 1984, and 1985.

3. In furtherance of the above investigation and in accordance with 26 U.S.C. S7602, I issued on September 26, 1986 an administrative summons, Internal Revenue Service Form 6638, to respondent directing him to appear before me on October 10, 1986, to give testimony and to produce for examination books, papers, records, and other data as described in the summons. The summons is attached to the Petition as Exhibit B.

4. In accordance with 26 U.S.C. S7603, on September 29, 1986, I served an attested copy of the Internal Revenue Service summons described in Paragraph 3 above on the respondent by sliding the summons under the entrance door of the respondent's last and usual place of abode.

5. On October 10, 1986, the respondent did not appear in response to

the summons. The respondent's refusal to comply with the summons continues to the date of this affidavit.

6. The books, papers, records or other data sought by the summons are not already in possession of the Internal Revenue Service except as follows: Dividend and interest income information reported by payers to Internal Revenue Service on Forms 1099 for the years 1981, 1982, 1983, 1984 and 1985.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to properly investigate the federal tax liability of respondent for the periods specified in paragraph 2 above.

_____

Merritt J. Swinney

Revenue Officer
Internal Revenue Service

Subscribed and sworn to before me,

this _____ day of _____, 1986.

_____
Notary Public for South Carolina

My commission expires:_____

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF

SOUTH CAROLINA

COLUMBIA DIVISION

UNITED STATES OF AMERICA and Merritt J. Swinney, Revenue Officer, Petitioners, v. Robert T. Boineau, Respondent.	) CIVIL ACTION NO._____

ORDER TO SHOW CAUSE

Upon Petition, of the United States of America and Merritt J. Swinney of the Internal Revenue Service for an order directing the respondent to give testimony and produce certain books, records and papers and it appearing from the petition and exhibits attached thereto that a summons was issued pursuant to I.R.C. S7602 (26 U.S.C. Section 7602) and served upon the respondent on September 29, 1986, directing him to give testimony and

produce designated books, records, and papers at a time and place certain, and it further appearing that the respondent has refused and neglected to appear, testify and produce such books, records and papers.

IT IS ORDERED AND DECREED THAT the respondent appear before Merritt J. Swinney on the 22nd day of June, 1987, at 11:00 a.m., at the offices of the Internal Revenue Service, 1835 Assembly Street, Room 570, Columbia, South Carolina, and there give testimony and produce the designated books, records and papers and, failing thereof, he is to appear before this Court at Courtroom #2 1845 Assembly Street Columbia, South Carolina on the 29th day of June, 1987, at 9:00 a.m., and then and there show cause, if any there be, why he should not be compelled to comply with said summons.

IT IS FURTHER ORDERED that the United States Marshal for this District

personally serve a copy of this Order, together with the Petition and exhibits thereto, upon the respondent, on or before May 31, 1987.

Dated this 14th day of May, 1987.

UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT
OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA, and Merritt J. Swinney, Revenue Officer,	)	CIVIL ACTION NO. M87-2-27
Petitioners,	)	
vs.	)	
Robert T. Boineau,	)	AFFIDAVIT
Respondent.	)	

Supplementing my previous affidavits in this case, Robert T. Boineau did not appear at my office at 11:00 a.m. on June 22, 1987, the time scheduled by the Court Orders. I was present in my office at the office of the Internal Revenue Service, 1835 Assembly Street at that time. He has not complied with the summons in these cases as of this date.

As set forth in my previous affidavit, Robert T. Boineau did not appear on October 10, 1986 in response to the

summons. Mr. Boineau was given an opportunity, to appear on November 13, 1986 (see copy of letter attached) but did not appear. He has been given numerous opportunities to comply but has not done so.

_____

MERRITT J. SWINNEY
Revenue Officer
Internal Revenue Service

Subscribed and sworn to before me,
this 25th day of June, 1987.

_____

Notary Public for South Carolina

My commission expires: _____

Department of the Treasury

Regional Counsel
Internal Revenue Service

Southeast Region

October 23, 1986

Mr. Robert T. Boineau
1829 Senate Street, Apt. 12-C
Columbia, SC 29201

Date Summons Served: September 29, 1986
Date Required to
Appear: October 10, 1986
Taxpayer: Robert T. Boineau

FAILURE TO RESPOND
TO INTERNAL REVENUE SUMMONS

Dear Mr. Boineau:

You were served with an Internal Revenue summons requiring you to appear at the office of the Internal Revenue Service on the date indicated above in order to give testimony or produce documents with respect to the tax liability of the above named party.

You failed to appear pursuant to said summons.

This is your final notice. You are hereby directed to appear before the Revenue Officer whose name and address are shown below on the date and at the time indicated.

If you fail to appear in response to this final notice, we will have no alternative but to cause appropriate legal proceedings to be instituted in the United States District Court to compel compliance with the summons.

If you have any questions about this matter, do not write or telephone this office, write or telephone the Revenue Officer shown below.

Sincerely yours,

JACK D. YARBROUGH
Regional Counsel

By: _____
DEAN R. MORLEY
District Counsel

PLACE & TIME OF APPEARANCE

NAME AND OFFICE ADDRESS OF REVENUE OFFICER	DATE OF APPOINTMENT
Merritt J. Swinney 1835 Assembly Street Columbia, SC 29201	Thursday, November 13, 1986

TIME: 8:00 a.m.
ROOM: 570
TELEPHONE NUMBER:
803-253-3839

BRING WITH YOU ALL DOCUMENTS SPECIFIED IN THE SUMMONS

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA AND MERRITT J. SWINNEY, REVENUE OFFICER,	) CASE NO. 87-2-27
PETITIONER,	) JUNE 29, 1987
-V-	) COLUMBIA, SOUTH CAROLINA
ROBERT T. BOINEAU,	) 9:00 A.M. TO
RESPONDENT.	) 9:15 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KAREN LECRAFT
HENDERSON, UNITED STATES
DISTRICT JUDGE

APPEARANCES:

FOR THE PETITIONER:
WISTAR D. STUCKEY, ESQ.
ASSISTANT UNITED STATES ATTORNEY
P. O. BOX 2266
COLUMBIA, SC 29202

FOR THE RESPONDENT:
ROBERT. T. BOINEAU
PRO SE

COURT REPORTER:
JOHN M. CLARKE, RPR
UNITED STATES COURT REPORTER
P. O. BOX 867
COLUMBIA, SC 29202
(803)256-4958

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT PRODUCED BY

COMPUTER AIDED TRANSCRIPTION

THE COURT: THIS IS A HEARING PURSUANT TO A RULE TO SHOW CAUSE WHICH WAS SIGNED ON MAY 14, 1987, IN THE ACTION ENTITLED UNITED STATES OF AMERICA AND MERRITT J. SWINNEY, REVENUE OFFICER. VERSUS ROBERT T. BOINEAU, CIVIL ACTION NUMBER M 87-2-27.

ALL RIGHT, MR. STUCKEY.

MR. STUCKEY: MAY IT PLEASE THE COURT, AS YOUR HONOR KNOWS THESE ARE PETITIONS TO ENFORCE INTERNAL REVENUE SERVICE. IT INVOLVES TWO SETS OF YEARS. THE ONE SET REFERS TO YEARS '72, '76, '77. '78 AND '79. WHAT WE ARE BASICALLY SEEKING IN THE WAY OF INFORMATION RELATIVE TO THOSE PARTICULAR YEARS IS FINANCIAL INFORMATION; ANY RECORDS PERTAINING TO HIS FINANCIAL INFORMATION AND THE COMPLETION OF A FINANCIAL STATEMENT ITSELF.

THE OTHER YEARS. THE OTHER PETITION REFERS TO YEARS '80, '81, '82, '83. '84.

AND '85. HE HAD BEEN SUBPOENAED, SUMMONSED TO PRODUCE RECORDS FOR THOSE YEARS AND GIVE TESTIMONY AS TO BOTH SETS OF YEARS, OR IN THE ALTERNATIVE TO PREPARE INCOME TAX RETURNS FOR THOSE YEARS AND BRING THEM BEFORE THE INTERNAL REVENUE OFFICER AND SUBJECT HIMSELF TO QUESTIONING AS TO THE TAX RETURNS FOR THOSE PARTICULAR YEARS, '80, '81, '82, '83, '84 AND '85.

HE WAS ORIGINALLY SUBPOENAED OR RATHER SUMMONSED TO APPEAR BEFORE MR. SWINNEY ON OCTOBER 10.

LET ME PLEASE SUBMIT AN AFFIDAVIT TO THE COURT. THE AFFIDAVIT REFLECTS ALREADY ON FILE THAT MR. BOINEAU DID NOT APPEAR AT THAT TIME. THERE WAS SOME CONTACT BY PHONE BUT THE SHORT OF IT IS HE DIDN'T APPEAR AND DIDN'T COMPLY PURSUANT TO THE AFFIDAVITS ON FILE.

HE WAS SERVED WITH BOTH SETS OF PAPERS BY THE MARSHAL PREVIOUS TO THIS DATE AND DIRECTED TO EITHER APPEAR ON JUNE 22 OR PREPARE TO SHOW CAUSE WHY HE SHOULDN'T

COMPLY.

I PASS UP AND AFFIDAVIT BY MR. SWINNEY STATING THAT MR. BOINEAU DID NOT APPEAR ON THOSE PARTICULAR DAYS. AT THE SAME TIME MR. TOMMY SIMPSON CALLED ME THIS WEEK, ABOUT WEDNESDAY OR THURSDAY---

THE COURT: I DIDN'T UNDERSTAND YOU.

MR. STUCKEY: MR. TOMMY SIMPSON, ATTORNEY HERE IN COLUMBIA, CALLED ME THIS WEEK, WEDNESDAY OR THURSDAY AND STATED THAT MR. BOINEAU HAD CONFERRED WITH HIM AND THAT MR. BOINEAU WAS NOW WILLING TO COMPLY.

OUR POSITION IS THAT IN VIEW OF THE PREVIOUS OPPORTUNITY THAT MR. BOINEAU HAD BEEN GIVEN TO COMPLY THAT WE FELT LIKE A COURT APPEARANCE WAS NECESSARY. WE WOULD RESPECTFULLY REQUEST THE COURT TO PUT MR. BOINEAU UNDER A COURT ORDER TO COMPLY. FAILING WHICH HE WOULD SUBJECT HIMSELF TO CONTEMPT.

MR. BOINEAU TELLS ME THAT HE WOULD LIKE

A REASONABLE TIME TO TRY TO GET AN ATTORNEY. IF THE COURT HAS NO OBJECTION TO THAT, WE HAVE NO OBJECTION TO MR. BOINEAU BEING GIVEN A WEEK FROM FRIDAY AT 10:00 O'CLOCK, BUT WE WOULD RESPECTFULLY REQUEST THE COURT TO MAKE MR. BOINEAU COMPLY TO THE PETITION AND SUMMONS ON FRIDAY, A WEEK FROM THIS COMING FRIDAY AT 10:00 O'CLOCK, FAILING WHICH HE WOULD BE SUBJECT TO CONTEMPT WHICH WOULD INVOLVE A POSSIBLE FINE OR IMPRISONMENT.

THAT IS OUR POSITION IN THE CASE.

THE COURT: ALL RIGHT. MR. BOINEAU.

MR. BOINEAU: MAY I BRING YOU A LETTER FROM THE ATTORNEY?

THE COURT: ALL RIGHT. HAVE YOU SHOWN IT TO MR. STUCKEY?

MR. STUCKEY: I GOT IT.

(MR. BOINEAU HANDS THE COURT A LETTER).

THE COURT: ALL RIGHT.

MR. BOINEAU: I HAD AN ATTORNEY AT THAT TIME BY THE NAME OF LARRY SMITH. WE

ATTEMPTED TO PRESENT -- I HAD A CONFLICT ON THE TENTH I COULDN'T GET OUT OF. HE SAID YOU CAN COME ON THE NINTH, OF COURSE, BUT YOU GOT TO BE BACK ON THE TENTH ANY WAY. MR. SMITH TRIED TO SEE IF HE COULD WORK OUT ANY OTHER TIME. MR. SWINNEY SAID NO, THEY WOULD SEND IT ON UP.

I HAD AN ATTORNEY LAST MONDAY MORNING WHICH AT THE LAST MINUTE WOULD NOT COME. SO I FINALLY GOT MR. TOMMY SIMPSON WHO VOLUNTEERED TO COME LAST WEEK BUT THEY SAID THEY PREFERRED US TO COME HERE TODAY AND PUT US UNDER COURT ORDER.

IT IS NOT AS BAD AS IT SOUNDS, YOUR HONOR, IS ALL I WAS TRYING TO SHOW. WE DID NOT DELIBERATELY IN ANY WAY TRY TO STAND ANYBODY UP. WE ARE NOT TRYING TO HIDE OR ANYTHING OF THAT NATURE. IT WAS JUST THAT I WAS TRYING TO GET AN ATTORNEY WAS MY PROBLEM. THEY ALL SEEM TO BE AFRAID OF THE COMBINATION OF FEDERAL COURT AND THE IRS.

THE COURT: HAVE YOU RETAINED MR.

SIMPSON?

MR BOINEAU: MR. SIMPSON AT THE LAST MINUTE SAID HE COULD NOT. MR. OSWALD I GOT FINALLY, I THINK ON THURSDAY, AND HE HAD A LONG TALK WITH MR. SWINNEY. MR. OSWALD DECLINED TO -- AT THIS POINT I DO NOT HAVE AN ATTORNEY. I AM GOING TO TRY AND FIND ONE EVERY MINUTE ALMOST.

THE COURT: CONSISTENT THEN WITH THE GOVERNMENT'S POSITION I AM GOING TO ORDER YOU TO APPEAR BEFORE THE IRS OFFICER, REVENUE OFFICER, MR. SWINNEY, AT 10:00 O'CLOCK ON FRIDAY, JULY 10 AND TO BRING WHATEVER RECORDS WITH YOU THAT YOU HAVE ALREADY BEEN TOLD TO BRING; AND IF YOU FAIL TO APPEAR AT THAT TIME, THEN YOU DO FACE A CONTEMPT CITATION.

ANYTHING FURTHER?

MR. STUCKEY: NOTHING FURTHER FROM THE GOVERNMENT, YOUR HONOR.

THE COURT: ALL RIGHT.

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF

PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

JOHN M. CLARK	07/27/87

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

UNITED STATES OF AMERICA and MERRITT J. SWINNEY, REVENUE OFFICER,	)
Petitioner,	) M87-2-27) MINUTE) ORDER
-vs-	)
ROBERT T. BOINEAU,	)
Respondent.	)

This matter came on for hearing on June 29, 1987 before the Honorable Karen LeCraft Henderson for Rule to Show Cause why respondent should not be compelled to comply with IRS summons.

Pursuant to the oral direction of the court, Robert T. Boineau shall appear before Revenue Officer, Internal Revenue Service at Columbia, South Carolina on Friday, July 10, 1987 at 10:00 a.m. to comply with IRS summons, or be held in contempt of this court.

AT THE DIRECTION OF THE COURT

ANN A BIRCH, CLERK
UNITED STATES DISTRICT COURT

By: Becky Wilson
Deputy Clerk

Columbia, South Carolina

June 29, 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH
CAROLINA COLUMBIA DIVISION

NOTICE OF APPEAL

UNITED STATES OF AMERICA and Merritt J. Swinney, Revenue Officer.	)	
Petitioners,	)	CIVIL ACTION NO.87-1927-16
v.	)	
Robert T. Boineau	)	
Respondent.	)	

NOTICE OF INTENT TO APPEAL

Please take note that the undersigned does hereby appeal the oral decision and order made by UNITED STATES DISTRICT JUDGE Karen Lecraft Henderson on June 29th 1987 on a case and exceptions herein after to be filed.

Please take notice that the undersigned will move before Honorable Court staying the order heretofore issued which is the subject of this Appeal.

Respectfully submitted.

Robert T. Boineau
Pro Se

Acceptance of Service:

Service of the above document is hereby accepted this 10th day of July 1987.

UNITED STATES ATTORNEY

_____

July 16, 1987

Mrs. Ann Birch
Clerk, U. S. District Court
1845 Assembly Street
Columbia, South Carolina 29201

Re: United States of America and
Merritt J. Swinney, Revenue
Officer, v. Robert T. Boineau
Civil Action No.M87-2-27

Dear Mrs. Birch:

In reference to Mr. Boineau's motion to stay incorporated in his Notice of Intent to Appeal, please file the following opposing papers which are enclosed:

(1) Memorandum in Opposition to Motion for Stay

(2) Affidavit of Merritt J. Swinney dated July 15, 1987.

I am enclosing the original and one copy of each for filing. Please "date stamp" the extra copies enclosed and return to me.

By copy of this letter I am forwarding a copy of each to Mr. Boineau.

Very truly yours,

VINTON D. LIDE
United States Attorney

By: _____
WISTAR D. STUCKEY
Assistant United
States Attorney

WDS/mr/jry
Enclosures

cc: Robert T. Boineau
1829 Senate Street, Apt. 12-C
Columbia, SC 29201
(w/enclosures)

IN THE DISTRICT COURT OF THE

UNITED STATES FOR THE DISTRICT

OF SOUTH CAROLINA

COLUMBIA DIVISION

UNITED STATES OF AMERICA and Merritt J. Swinney, Revenue Officer,	) CIVIL ACTION NO.M87-2-27
Petitioners,	)MEMORANDUM IN
vs.	)OPPOSITION TO MOTION
Robert T. Boineau,	) FOR STAY
Respondent.	)

The respondent in this case has filed a "notice of intent to appeal" which incorporates a motion to stay the oral decision and order of the Court of June 29, 1987.

In the first instance, the motion is untimely. The respondent's "notice of intent to appeal" as reflected on its face shows the respondent filed same at 5:08 p.m. on July 10, 1987. The Court directed the respondent to appear at the office of Internal Revenue Service at 10:00 a.m.

July 10, 1987 and to comply with the summonses then. As reflected by the affidavit of Mr. Swinney filed herewith, Mr. Boineau appeared on July 10, 1987 at 10:00 a.m. and left at about 12:15 p.m., and did not comply, and still has not complied. It is obvious that another proceeding before the District Court at some point will be necessary to resolve the matter of Mr. Boineau's failure to comply. He is in no position to move or argue for a stay after the time for compliance as directed by the Court has passed.

In the second instance, the respondent appeared at the hearing of June 29, 1987 and indicated a willingness to comply. In any event, as reflected by the record in this case, the respondent has been given numerous opportunities to comply, including an opportunity and direction by the Court, and he still has not complied. The respondent has demonstrated no valid

reason why a stay should be granted by his motion.

The entire record in this case was a sound basis for the issuance of an oral decision and direction by the Court on June 29, 1987.

It is submitted that the Court should issue an order denying the motion to stay.

Respectfully submitted,

VINTON D. LIDE
United States Attorney

By: _____
WISTAR D. STUCKEY
Assistant United
States Attorney

Columbia, South Carolina

July 16, 1987

CERTIFICATE OF SERVICE BY MAIL

UNITED STATES OF AMERICA and MERRITT J. SWINNEY, Revenue Officer,	)	CIVIL ACTION NO.M87-2-27
v.	)	
ROBERT T. BOINEAU.	)	

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the _____ District of South Carolina and is a person of such age and discretion as to be competent to serve papers.

That on July 16, 1987 she served a copy of the attached MEMORANDUM IN OPPOSITION TO MOTION FOR STAY AFFIDAVIT OF MERRITT J. SWINNEY DATED JULY 15, 1987 by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Federal Building, 1100 Laurel Street, Columbia, South Carolina

29201.

Address: Robert T. Boineau
1829 Senate Street, Apt. 12-C
Columbia, SC 29201

_____
Marlene T. Rikard
Legal Technician

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 87-2131

UNITED STATES OF AMERICA;
MERRITT J. SWINNEY, Revenue Officer

Plaintiffs – Appellees

v.

ROBERT T. BOINEAU

Defendant – Appellant

Appeal from the United States District Court for the District of South Carolina, at Columbia. Karen L. Henderson, District Judge. (C/A Nos. 87-1927; M-87-2-27)

Submitted: April 28, 1988 Decided: August 19, 1988

Before ERVIN, CHAPMAN, and WILKINS, Circuit Judges.

H. Jackson Gregory (GREGORY & YOUNG) for Appellant. William S. Rose, Jr., Assistant Attorney General; Gary R. Allen, Charles E. Brookhart, Doris D. Coles, Attorneys (U.S. DEPARTMENT OF JUSTICE); Vinton DeVane Lide, United States Attorney, of Counsel, for Appellees.

PER CURIAM:

Robert T. Boineau appeals the district court's order enforcing two IRS summonses. Boineau claims that the district court erred in placing him under court order while he was without the benefit of counsel. We affirm.

Boineau argues that when he, without retained counsel, was placed under the district court's enforcement order, he "was immediately denied all his Constitutional rights." This claim is frivolous. There is no general sixth amendment right to counsel in civil tax proceedings. Boineau's fifth amendment arguments are premature; proper invocation of the fifth amendment privilege requires its assertion with respect to specific questions. See North River Ins. Co. v. Stefanou, 831 F.2d 484 (4th Cir. 1987).

Boineau failed to meet his burden of showing that the summonses were issued for an improper purpose to obtain irrelevant or unnecessary information, or that issuance of the summonses somehow violated the process prescribed in the Internal Revenue Code. United States v. Powell, 379 U.S. 48, 57-58 (1964). The district court's enforcement of the summonses was, therefore, proper.

We deny Boineau's motion to schedule oral argument and dispense with oral argument because

the facts and legal contentions are adequately presented in the materials before the court and because oral argument would not significantly aid the decisional process. We affirm the order of the district court enforcing the summonses.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-2131

United States of America, et al,

Plaintiffs – Appellees,

v.

Robert T. Boineau,

Defendant – Appellant.

On Petition for Rehearing

Upon consideration of appellant's petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Wilkins, for a panel composed of Judge Ervin, Judge Chapman, and Judge Wilkins.

For the Court

s/John M. Curann
CLERK

FILED SEP 28 1988
U.S. Court of Appeals
Fourth Circuit